

CHAPTER 17. SUBDIVISION REGULATIONS

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Article 1. Definitions

17-101 DEFINITIONS. For the purpose of these regulations, certain terms used herein are defined as follows:

- 101.1 ALLEY - means a minor way, dedicated for public use, which is used primarily for vehicular access to the sides or rear of lots.
- 101.2 BLOCK - means a parcel of land entirely surrounded by streets or highways, or as otherwise determined by the City Engineer.
- 101.3 COMPREHENSIVE PLAN - means the Comprehensive Plan for the City of Gardner, duly adopted and including subsequent amendments.
- 101.4 CUL-DE-SAC - means a street having one end open to traffic and being terminated by vehicular turn-around.
- 101.5 EASEMENT - means a permanent or temporary grant of right by a property owner, to the public, a corporation or other persons, of the use of a strip of land for specified purposes. Ownership of the strip of land shall normally remain with the property owner.
- 101.6 HIGHWAY - means a thoroughfare controlled and maintained by the Kansas State Highway Department.
- 101.7 IMPROVEMENTS - means street pavement, curbs, drainage facilities, sidewalks, utility lines, street markers, trees and bridges.
- 101.8 LOT - means a portion of subdivision intended as a unit for transfer of ownership or for development.
- 101.9 PLAT, FINAL - means a drawing of a permanent nature showing the precise location and dimension of such features as streets, lots, easements and other elements pertinent to transfer of ownership and prepared for permanent record.
- 101.10 PLAT OR PLAN, PRELIMINARY - means a drawing showing the proposed general patterns of streets, lots and land uses within a tract to be subdivided.
- 101.11 RULE EXCEPTION - means the allowing of a subdivision to deviate from one or more specific standards and requirements of these rules and regulations.

- 101.12 STREET, PRIVATE - means a right-of-way which affords principal means of vehicular access to property abutting thereon, which right-of-way is owned, controlled and maintained by persons other than the public.
- 101.13 STREET, PUBLIC - means a right-of-way which affords principal means of vehicular access to property abutting thereon, which right-of-way has been dedicated to the public for such use.
- 101.14 SUBDIVIDER - means a person, firm or corporation undertaking the subdividing of land.
- 101.15 SUBDIVISION - means the division of a lot, tract or parcel of land into two or more lots, plots, sites or other division of less than forty acres, including a resubdivision of land and vacation of streets, lots and alleys. The creation of a street, alley or other public way by dedication shall be deemed a subdivision. (Ord. 1734, Sec. 1)

Article 2. Procedure

17-201 SUBMISSION FOR RECOMMENDATION AND APPROVAL. All final plats of subdivisions within the corporate limits of Gardner and as defined herein shall be submitted to the Planning Commission for its consideration and its recommendation shall then be submitted to the Governing Body for its official consideration and action. No plat or other subdivision of property and no dedication or vacation of a public street or establishment of a private street shall be filed with the register of deeds as provided by law until approval shall have been endorsed thereon by the Planning Commission and Governing Body of the City of Gardner. No building permits shall be issued for unplatted property unless the platting procedures of this article are waived by the Planning Commission and Governing Body. (Ord. 1734, Sec. 1)

17-202 PRELIMINARY PLAT.

- 202.1 A preliminary plat of the proposed subdivision shall be prepared by the subdivider or his agent and submitted to the Planning Commission prior to preparation of a final plat for a record. The Commission shall satisfy itself that the proposed street pattern and land use will conform to the Comprehensive Plan, and Zoning Ordinance and other local standards.
- 202.2 Ten (10) prints of the preliminary plat shall be submitted to the Planning Commission not less than thirty (30) days prior to the meeting date at which approval is asked. The preliminary plat shall be drawn to a scale ranging from one (1) inch to 50', to one (1) inch to 200'; however, one (1) inch to 100' is preferred. The preliminary plat shall contain the following:
- A. The proposed name of the subdivision and the names of any adjacent subdivisions;
 - B. The boundary lines of the tract with approximate dimensions, and a legal description of the tract;
 - C. The general location, width and alignment of existing and proposed streets, sidewalks and any highways and alleys; existing sanitary sewer and water lines; storm sewers; transmission lines for gas or electric; and easements;

- D. The general pattern and sizes of proposed lots and tracts; total area of tract, number of proposed lots; and average area per lot;
- E. The size and types of proposed easements;
- F. The proposed use of land, whether for single-family, multi-family, commercial, industrial, parks, schools, etc.;
- G. Topography of the area contained in the plat shown by two foot or five foot contour intervals;
- H. All platted or existing streets and property lines on land adjacent for a distance of not less than four hundred (400) feet;
- I. A vicinity map showing the section, township and range at a scale of 1" = 2000 feet;
- J. The names of the subdivider, the firm responsible for preparation of the plat, north point, scale, date of preparation and any revisions, space for endorsement by the City Engineer and Planning Commission. (Ord. 1783, Sec. 1)

202.3 The Commission shall approve or deny the preliminary plat as submitted or may approve the plat as submitted subject to specified changes. Upon denial the subdivider may appeal the Commission's decision to the Governing Body who may affirm or reverse the same. Upon approval any objector may appeal the Commission's decision to the Governing Body who may affirm or reverse the same. (Ord. 1734, Sec. 1)

202.4 Approval of the preliminary plat does not constitute acceptance of the subdivision, but authorizes preparation of the final plat. No grading for streets or construction of improvements shall take place in the subdivision prior to approval and endorsement of the final plat and the submittal to and approval of construction plans by the City Engineer. (Ord. 1734, Sec. 1)

202.5 Approval of the preliminary plat is effective for one (1) year, unless the Planning Commission grants an extension. If a final plat is not submitted for approval within one (1) year of the approval of the preliminary plat, the preliminary plat must be re-submitted to the Commission. (Ord. 1734, Sec. 1)

17-203 FINAL PLAT.

203.1 After the preliminary plat has been approved by the Planning Commission, or by the Governing Body on appeal, a final plat for record shall be prepared and submitted to the Planning Commission, and upon approval, to the Governing Body for final approval. The final plat may contain all or a portion of the area contained in the preliminary plat. The final plat must conform to the street patterns, lot size and pattern and other conditions of the preliminary plat as approved.

203.2 Ten (10) prints of the final plat shall be submitted to the City Engineer not less than thirty (30) days prior to the date of the Planning Commission meeting at which approval is asked. The plat shall be drawn to a scale of 1"=50' to 1"=200' and shall contain the following:

- A. The name of the subdivision and any adjacent subdivisions, the names of streets which shall conform to the existing pattern, and a system of lot and block numbers in any orderly sequence shall be shown on the plat;
 - B. A boundary survey of third order surveying accuracy (maximum closure error one in five thousand), with bearings and distances referenced to section or quarter section corners;
 - C. The plat shall contain the following data: The length and radii of all curved street and lot lines and the bearings and length of all straight street and lot lines and the area in square feet of each lot and/or tract. Bearings and distances referenced to section or 1/4 section lines. If exterior bearings and dimensions do not coincide with adjoining plats, show recorded information of existing adjoining plats;
 - D. The dimensions in feet and decimals of feet of all lots, the location of building setback lines along front and side streets and the location and dimensions of all necessary easements shall be shown on the plat;
 - E. Certification of dedication of all streets, highways and other right-of-ways or parcels for public park or other public use, signed by the owners and all other parties who have a mortgage or lien interest in the property;
 - F. Certification by a registered land surveyor to the effect that the plat represents a survey made by that surveyor; and meeting Kansas State Statutes in all respects;
 - G. North point, scale and date; Firm responsible for preparations of the plat and revision dates if used;
 - H. Space for endorsement of the plat by the Planning Commission and Governing Body. (Ord. 1783, Sec. 1)
- 203.3 Any plat of a subdivision of land approved by the Governing Body shall be recorded within sixty days after approval. A certified copy of the plat shall be furnished to the City Clerk. (Ord. 1734, Sec. 1)
- 203.4 Any plat not recorded within sixty days shall be null and void. (Ord. 1734, Sec. 1)

Article 3. Planning Standards

17-301 GENERALLY. Care should be exercised in the design and laying out of streets, lots and other elements that good planning principles are followed, efficient use is made of land and that natural assets such as trees and topography be retained wherever practical. (Ord. 1734, Sec. 1)

17-302 STREET ARRANGEMENT.

- 302.1 Provisions must be made for the extension of any existing dead-end streets. Off-center street intersections with any offset of less than one hundred fifty (150) feet between centerlines will not be approved. Streets with reverse curves must have a tangent between curves. Local streets shall have a minimum 50' tangent; collector, and service thoroughfares a 100' minimum, except none required if the horizontal radii is greater than 500'.

- 302.2 Proposed streets must conform to existing topography as nearly as possible, in order that drainage problems may be reduced. Surface drainage across residential lots or along the side or rear lot lines shall be avoided wherever practical. Where such surface drainage on residential lots is necessary, easements shall be provided and the City may require installation of pipe, masonry or rip-rap, flumes or inlets, or such other protective devices in order that adjacent or surrounding property or the welfare of the public shall not be endangered and maintenance will be kept at a minimum. (Ord. 1734, Sec. 1)

17-303 RELATION TO ADJOINING STREETS AND LAND. The system of streets designated for the subdivision must connect with any streets already platted to the boundary from abutting subdivisions. At reasonable intervals streets must be continued to the boundaries of the tract subdivided, so that future abutting subdivisions may connect therewith. (Ord. 1734, Sec. 1)

17-304 DEAD-END STREETS. Dead-end streets will not be approved unless such dead-end streets are provided to connect with future streets in adjacent land, but cul-de-sacs may be permitted where a vehicular connection is not essential. Such cul-de-sacs shall provide proper access to all lots, shall not be more than eight hundred (800) feet in length, and a turn-around shall be provided at the closed end, with an outside right-of-way line radius of at least fifty (50) feet. (Ord. 1734, Sec. 1)

17-305 BLOCK LENGTHS. In general, intersecting streets determining block lengths shall be provided at such intervals as to serve cross traffic adequately and to meet existing or future streets. Where no existing streets or plats control, the blocks shall not exceed one thousand three hundred twenty (1,320) feet in length. (Ord. 1734, Sec. 1)

17-306 PEDESTRIAN WALKWAYS. In blocks where substantial pedestrian traffic may occur, such as adjacent to schools, the Commission or the Governing Body may require pedestrian walkways through blocks. Such walkways shall be ten to fifteen (10 to 15) feet in width, shall be adequately fenced and contain a concrete walk the entire length. Such walkways shall be dedicated to the public in the same manner as streets. (Ord. 1734, Sec. 1)

17-307 THOROUGHFARES AND STREETS.

- 307.1 For the purpose of facilitating the movement of traffic, certain streets are designated in the Comprehensive Plan as thoroughfares. A copy of this Plan shall be on file in the office of the Planning Commission, and reference shall be made to this Plan before any preliminary subdivision plat is approved.

- 307.2 Standards for thoroughfares shall be as follows:

A. Major Arterial Thoroughfares:

Minimum right-of-way width -----100 ft.
(except that a 120' right-of-way shall be provided for a distance of 500'
from the centerline of an intersection with another arterial thoroughfare)

Maximum gradient -----6%

Minimum radii of horizontal curves -----750 ft.

Minimum sight distance on vertical curves -----500 ft.

B. Minor Arterial Thoroughfares:

Minimum right-of-way width -----80 ft.
(except that a 100 ft. right-of-way shall be provided for a distance of 300
ft. from the centerline of an intersection with a collector, service, or
arterials)

Maximum gradient -----6%

Minimum radii of horizontal curves -----500 ft.

Minimum sight distance on vertical curves -----400 ft.

C. Collectors and Service Roads Thoroughfares:

Right-of-way width -----60 ft.
(except that an 80' right-of-way shall be provided for a distance of 200'
from the centerline of an intersection)

Maximum gradient -----8 ft.

Minimum radii of horizontal curves -----250 ft.

Minimum sight distance on vertical curves -----350 ft.

307.3 The remainder of the streets in the City shall be classed as local streets and shall have the following minimum requirements.

Minimum right-of-way in single family areas -----50 ft.

Minimum right-of-way width in multi family and
industrial areas -----60 ft.

Maximum gradient -----10%

Minimum radii of horizontal curves -----200 ft.

Minimum sight distance of horizontal curves -----200 ft.

307.4 The minimum gradient on a street shall be eight-tenths (8/10ths) percent except that minimum of fifty-hundredths (.50) percent may be permitted by the City Engineer in unusual cases.

307.5 When a proposed subdivision abuts a thoroughfare, or is bounded by a line that will in the future lie in a thoroughfare, or is divided by a thoroughfare, as shown in the Comprehensive Plan, then the owner of that subdivision shall dedicate, without charge, any land within such subdivision that is necessary to provide conformity with the foregoing standards, such dedication to be shown on the preliminary plat and final plat. (Ord. 1734, Sec. 1)

17-308 LOT ARRANGEMENT AND SIZES.

308.1 All plats which have not received approval in the preliminary state, as set forth herein, on May 21, 1990, shall be subject to the following regulations regarding residential lot pattern.

- 308.2 The number of lots facing on collector streets shall be kept to a minimum in each subdivision. The street pattern shall be so designed that the side lines of lots abut collector streets wherever land shapes and topography permit. Residential lots shall not face on major or minor arterial, thoroughfares. Residential lots shall have a depth of not less than one hundred fifteen (115) feet.
- 308.3 Residential lots shall have a minimum width of seventy (70) feet measured at the building line and shall contain a minimum of 8,000 square feet, except that lots otherwise containing sufficient lot area as required in the Zoning Ordinance may have a width at the front lot line of not less than thirty five (35) feet provided that a minimum of 60' is available at the front building line when such lots front on a cul-de-sac with a right-of-way having a 50 foot radius. (Ord. 1734, Sec. 1)

17-309 DWELLING SIZE CLASSIFICATIONS. As part of the approval of a preliminary or final plat for all single-family subdivisions, the Planning Commission shall designate a minimum total livable floor area classification and a maximum total livable floor area for all lots within the subdivision. Total livable floor area shall mean gross floor area, minus garages and basements. The classification of minimum and maximum total livable floor area shall be as follows:

<u>Classification</u>	<u>Minimum Total Livable Floor Area (square feet)</u>
1	2,600 and over
2	2,400
3	2,200
4	2,000
5	1,800
6	1,600
7	1,400
8	1,300
9	1,200
10	1,100
11	1,000
12	864

17-310 DESIGNATION OF DWELLING SIZE CLASSIFICATIONS. Upon the designation of a minimum and maximum dwelling size classification by the Planning Commission, all dwelling units built within the subdivision or portion thereof shall contain a total livable floor area which falls within the designated range. No land shall be so classified as to reduce the minimum total livable floor area requirements below that provided by the next lower classification to that designated for any separately-owned land contiguous to or directly adjacent across a street. In the event the differential between such classification is so great as to render such a limitation impractical, then the Planning Commission may designate a classification or classifications for the proposed subdivision or portions thereof which will, in its judgment, be in harmony with the surrounding area. Each single-family dwelling or residence hereafter located or constructed within the City which is situated upon land not previously classified and designated as to minimum floor area for single-family dwelling purposes shall contain a minimum floor area of ninety (90%) percent of the average floor area of existing single family dwellings within one thousand (1,000) feet of the proposed dwelling or residence.

17-311 LOT SPLITS.

- 311.1 A previously platted lot may be divided as a lot split by either metes and bounds description or by replatting. If such a lot is to be divided by metes and

bounds description, it may only be divided one time and by only one new dividing lot line, and shall not again be divided without replatting. Any such lot split need not comply with the procedures set out in this ordinance for platting. All lots produced by a lot split shall conform to all minimum standards of this ordinance and other applicable codes of the City. Upon receipt of an application for a building permit for a lot produced by a lot split, the Codes Administrator shall, within thirty (30) days, determine if the lot split is in compliance with this ordinance. The applicant may appeal to the Governing Body for issuance of said permit if the Codes Administrator fails to make said determination within the thirty (30) day time period.

- 311.2 Lots zoned for industrial purposes may be divided into two or more tracts without replatting such lot. Provided, however, that the lot so produced shall conform to all minimum standards of this ordinance and other applicable codes of the City.

17-312 PLANNED ZONING DISTRICTS. When development within a subdivision is to proceed under a planned district as set forth in District RP-1 through MP-2 in the Zoning Ordinance, the normal pattern of lots and blocks need not be included on the plat but any parcels and tracts set aside for such planned development must be of a shape and topographic contour to allow flexibility of design of the planned development. (Ord. 1734, Sec. 1)

17-313 SUBDIVISION ENTRANCE AND OTHER DECORATIVE STRUCTURES. Where one or more entrance or street structures or ornaments, such as monuments, pillars, fences, walls, statuary or other decorative features are to be installed in a permanent fashion, the location, size and design shall be included with the street plans submitted to the City Engineer for approval. This submission shall also include a copy of the bylaws or other documentation of the association which will have permanent responsibility for maintenance. Such bylaws or other documentation shall contain language which will, in the opinion of the City Engineer, assure proper maintenance of such structures by such association. (Ord. 1734, Sec. 1)

Article 4. Required Improvements.

17-401 PREREQUISITE TO BUILDING PERMIT - BOND.

- 401.1 Certain improvements shall be installed within the subdivision before building permits are issued for buildings on abutting lots or, in lieu of actual installation, benefit districts may be used for the required improvements. As an alternative to the above procedures, the developer may provide performance bond or other surety acceptable to the Governing Body assuring that the required improvements will be installed within a reasonable time.

All improvements shall be installed in compliance with the specifications of the City of Gardner and maintenance bond shall be required by the Governing Body.

- 401.2 Improvements shall be required as set out in this chapter. (Ord. 1734, Sec. 1)

17-402 STREETS. All streets in the subdivision shall be paved. No grading or other construction shall take place within a street right-of-way until the construction plans have been approved by the City Engineer. All street construction shall conform to the specifications of Gardner and compliance therewith shall be confirmed by the City Engineer prior to the acceptance by or release of surety by the Governing Body. (Ord. 1734, Sec. 1)

17-403 WALKS. Sidewalks are required with all development, except individual building sites within an approved industrial park.

403.1 If only required on one side of the street, sidewalks are generally located on the north and east side, or as directed by city staff. All sidewalks shall be of Portland cement concrete, and shall comply with specifications of the City of Gardner. Sidewalks shall be located in the platted street right-of-way, one foot from the property line, or as directed by city staff. Walks shall also be installed in any pedestrian easements, as may be required by the governing body. The City Engineering Administrator shall have the authority to direct sidewalk placement due to extenuating circumstances while maintaining the intent of this ordinance. (Ord. 1853, Sec. 1)

403.2 All sidewalks shall be installed per the following:

Residential Street	2 - 4' sidewalk
Residential Collector Street	1 - 6' sidewalk
Commercial Collector Street	1 - 6' sidewalk
	1 - 10' asphalt sidewalk
Industrial Collector Street	1 - 6' sidewalk
	1 - 10' asphalt sidewalk
Minor Arterial Street	1 - 6' sidewalk
	1 - 10' asphalt sidewalk
Major Arterial Street	1 - 6' sidewalk
	1 - 10' asphalt sidewalk
<i>See 17-403.1 for Exception</i>	(Ord. 1853, Sec. 1)

17-404 STORM DRAINAGE. Culverts, storm sewers inlets, rip-rap slopes, stabilized ditches and other improvements shall be installed to handle storm water adequately. Such improvements may be a part of a benefit district, may be installed by the subdivider prior to building permit issuance on abutting land, or installation may be guaranteed by performance as may be negotiated with the Governing Body. (Ord. 1734, Sec. 1)

17-405 SANITARY SEWERS AND OTHER UTILITIES. The subdivider shall be responsible for the proper installation of all utilities, including sanitary sewers, and connection to approved treatment facilities, water supply approved by the Kansas Department of Health & Environment, electricity, and telephone service. Such utilities shall be installed in accordance with the specifications and minimum standards of the controlling utility company or public agency. (Ord. 1734, Sec. 1)

17-406 STREET SIGNS. The subdivider shall be responsible for the cost of installation of all labor and materials for the installation of street signs at all intersections within the subdivision. Such streets signs shall follow the street names designated on the approved final plat and shall comply with the specifications of the City of Gardner. The City will procure the materials and install the street signs. (Ord. 1734, Sec. 1)

17-407 PERIPHERAL STREET IMPROVEMENTS. The subdivider will be responsible for one-half of all peripheral streets which may border the subdivision. The subdivider's responsibility shall be limited to the dedicatin of one-half of the recommended right-of-way as described in these Subdivision Regulations. (Ord. 1951, Sec. 1)

17-408 PURPOSE AND AUTHORITY. The Excise Tax levied by this ordinance on the act of platting real property in the City has for its purpose the raising of general revenues to be used for general City projects or General Fund operations as approved by the Governing Body

during the adoption of the City's annual budget. The City's authority to levy this Excise Tax is derived from Article 12, Section 5 of the Kansas Constitution and K.S.A. 12-137 and 12-138.

408.1 DEFINITIONS

- A. Applicant. The person, firm partnership, joint venture or corporation that seeks to exercise the privilege of engaging in the business of platting real property in the City by applying for Plat approval.
- B. Area. The gross area of the real property included in a plat for which approval is sought, measured in square feet less the area described below in Section 408.04.
- C. City. The City of Gardner, Kansas.
- D. Director. The Director of Community Development of the City or his or her designee.
- E. Major Street. A street intended to provide for major traffic movements between areas of the city and designated on the City of Gardner's Community Development Plan as an Arterial or Collector.
- F. Plat. A recordable final plat giving the location and dimensions of land as one or more lots, blocks, tracts or parcels, and meeting the requirements of the Municipal Code of the City of Gardner and Kansas statutes.
- G. Recordable Plat. A Plat capable of being recorded with the Register of Deeds of Johnson County, Kansas.
- H. Tax. The Excise Tax levied by this Ordinance.
- I. Tax Rate. The rate of taxation applied to the Area of real property expressed in dollars per square foot.

408.2 LEVY AND PAYMENT OF TAX.

- A. A Tax is hereby levied on the act of platting real property in the City. The tax rate shall in an amount per square foot of the area as established by the Governing Body by Resolution. The Area shall be determined by the Director in the manner set forth herein. (Ord. 2019, Sec. 1)
- B. Every Applicant shall pay a Tax equal to the Area times the Tax Rate to the City before the Mayor signs an approved Recordable Plat.
- C. No Plat shall be recorded until the Applicant has paid the applicable Tax.
- D. The Tax shall be paid in cash or by certified check.

- E. The tax payments received shall be deposited in the City's Street Improvement Reserve Fund.

408.3 PLEDGE OF REVENUES. All revenues received from the Excise Tax are pledged solely for the purpose of funding the improvement of major streets in the City of Gardner. At the discretion of the Governing Body, other revenues as may be legally utilized for such purpose may be deposited into the Street Improvement Reserve Fund. The City may issue and utilize general obligation bonds or other certificates of indebtedness as are within the authority of the City in such manner and subject to such limitations as may be provided by law in furtherance of the financing and provision of the improvement of major streets. Funds pledged toward the retirement of bonds or other certificates of indebtedness may include the Excise Tax and other City (and non-City) funds and revenues as may be allocated by the Governing Body.

408.4 DEDUCTIONS AND EXCEPTION FROM AREA. For the purposes of calculating the Tax, the Area shall not include:

- A. Land dedicated through the subject plat and accepted by the City as public right-of-way for a Major Street.
- B. Land designated on the Plat as a public park to be dedicated to and accepted by the City, and to be reserved for public recreational use or public open space as provided by the Code of the City of Gardner, Chapter 17, Section 410, or amendments thereto.
- C. Land included in the Plat identified as a separate lot, block, tract or parcel to be owned and maintained by a homes association and used exclusively for recreational use or private open space for the benefit of the members of the homes association provided that: 1) the applicant at the time application is made for approval of the Plat makes application to have the land excluded from the Area; 2) the application for exclusion includes a plan depicting any landscaping and improvements to be made to the land excluded; and, 3) the governing body finds and determines that the location, area, configuration, topography, proposed landscaping and improvements, and use of the land is such that it is in the public interest to exclude the land from the Area for the purposes of determining the amount of the Tax. Land to be excluded under the foregoing provisions may be left unimproved as part of an open space plan approved by the governing body.
- D. Land included in a preliminary plat approved prior to January 5, 2000, which is subject to a development agreement entered into by the City and the owner.
- E. Land included in a replat of a recorded subdivision, where the replat does not increase the area in the recorded subdivision to be replatted and the original plat was recorded on or after January 5, 2000.

408.5 CREDITS AGAINST EXCISE TAX. An Applicant shall receive a credit against the Tax due for:

- A. The amount of any payment to the Public Improvement Street Development Fund/Account made pursuant to the requirements of Ordinance 1805 in effect from April 19, 1995, through January 4, 2000, for a tract of land included in the Plat for the cost of construction to City standards of a Major Street.
- B. The amount, paid or to be paid, of any original special assessment, not including any interest thereon, levied against any tract of land included in the Plat for payment of the cost of construction to City standards of a Major Street. If all of said tract is not included in the Plat, then the credit shall be the amount of the original special assessment that would be apportioned on an area basis to the portion of the entire tract included in the Plat. If the Plat includes land not subject to the levy of a special assessment, then the credit shall not exceed the amount of Tax that would be due when calculated only on the area which was subject to the special assessment.
- C. The reasonable cost, or a portion thereof, paid or incurred, or to be incurred, by the Applicant, or the Applicant's predecessors in interest or ownership, for construction to City standards of a Major Street abutting and serving land included in the Plat, where such construction was required by the City as a condition for approval of a preliminary plat, and where such construction was inspected and accepted by the City, and where evidence of the costs and the reasonableness thereof sufficient to the satisfaction of the Director was submitted to the City. For costs previously paid or incurred for such construction, sufficient evidence shall include a construction contract or a surety bond, or lacking such information, an engineer's estimate of the probable cost of construction when the improvements were made. For costs to be incurred, sufficient evidence shall be an itemized construction contract and an executed, performance surety bond on file with the City for 100 percent of the cost of the proposed improvements, both based on construction plans prepared by a Kansas licensed engineer and approved by the Director.

The amount of the credit shall be determined by dividing the reasonable cost, as determined by the Director, by the square feet of land included in the approved preliminary plat. The result of this division is the square-foot credit that shall be allowed for each square foot included in the Plat.

If the Plat includes land that was not included when the requirement to make improvements to the Major Street was established, no credit shall be given toward the Tax associated with that land.

- D. In the case of a replat of a recorded subdivision, where said replat increases the area in the recorded subdivision, the credit shall be the amount of any Tax, or portion thereof, paid by the Applicant, or the

Applicant's predecessors in interest or ownership, for the previously recorded subdivision. The credit shall be applied on a per square foot basis and the amount shall be determined by dividing the Tax by the area of the recorded subdivision plat.

408.6 PROCEDURES OF CALCULATING TAX AND CREDITS.

- A. The Applicant shall be responsible for completing an application for credit and for supplying all information necessary for calculation of the Area and the credit on forms provided by the City. Any application or request for credit shall be specifically made in writing to the Director prior to governing body approval of a Plat. The credit for reasonable costs to be incurred shall be estimated on the application for credit. The actual amount of credit given against the required Tax shall be based on the required supporting evidence as outlined above in Section 408.05, which shall be submitted prior to the Mayor signing the Plat. If no such request is made prior to such governing body approval, then the Applicant is deemed to have waived any right or claim to any credit.
- B. Under no circumstances shall a credit be given in excess of the amount of Tax calculated to be due on the Plat.
- C. The decision of the Director on the Area or on the amount of the credit may be appealed to the governing body by the Applicant prior to consideration of the Plat by the governing body. The notice of appeal shall be in writing filed with the City Clerk and shall state with particularity the decision being appealed and the manner in which and the reason why the Applicant believes the Area or credit was incorrectly calculated and what the Applicant believes are the correct calculations. The governing body's consideration of an appeal shall be limited to determining the accuracy of the calculated Area or credit. The decision of the governing body shall be made based strictly on the provisions of section 17-408 as set forth above.

(Ord. 1951, Sec. 2)

17-409 Repealed (Ord. 1951, Sec. 2).

17-410 PARK AND RECREATION LANDS.

- 410.1 DEDICATION OR FEE REQUIRED. At the time of final plat approval, the Governing Body shall determine whether to accept park dedication or have the subdivider pay a fee in lieu of park dedication or a combination of dedication and fee. (Ord. 2005, Sec. 3)
- 410.2 FEE IN LIEU OF DEDICATION. In lieu of the dedication of all or part of the park area required by this Section, the Governing Body may require that a subdivider contribute to the general fund of the City a sum of money deemed appropriate by the Governing Body. The Governing Body shall establish by resolution the amount of the fee in lieu of dedication of park land, such fee shall be set in accordance with a schedule established by the Governing Body,

which schedule shall establish fee based on the proposed use of the property to be assessed on a per dwelling unit basis. The fees shall be paid prior to issuance of any building permit. (Ord. 2019, Sec. 1)

- A. The fee in lieu of dedication shall be paid into the City treasury at the time the plat is filed with the office of register of deeds. Alternatively, at the option of the developer the fee may be paid on a per dwelling unit basis to the city treasury at the time of issuance of building permit on each individual lot or dwelling unit. No building permit shall be issued for a lot or dwelling unit on which a park fee is required until such fee has been paid. (Ord. 1926, Sec. 1)

Article 5. Rule Exceptions.

17-501 WHEN MADE. The standards and procedures required herein shall be interpreted and applied literally in the case of all subdivision plats submitted after May 21, 1990. In case, however, of hardship caused by size, location or configuration of land, topography or other factors which affect a specific tract or subdivision or portion thereof, the subdivider may request a rule exception from one or more of the requirements contained herein. A rule exception may be requested on forms provided, at the time of filing the preliminary or final plat. A rule exception must be approved by the Planning Commission and the Governing Body, provided that, in its judgement, such action will not violate the public interest, unnecessarily burden the City of Gardner, or will annul the intent and purpose of these regulations. (Ord. 1734, Sec. 1)

Article 6. Appeals.

17-601 TO WHOM MADE. Any decision of the Planning Commission or administrators of this ordinance on matters contained herein may be appealed to the Governing Body of the City of Gardner, and the Governing Body may reverse or affirm such decision. (Ord. 1734, Sec. 1)

Article 7. Industrial Airport Area Overlay District.

17-701 PURPOSE AND INTENT. The subdivision regulations contained herein are intended to supplement the existing subdivision regulations of the jurisdiction within which the property is located and to provide for the orderly growth and compatible development of land within the Airport Interest Area of the Industrial Airport Area Overlay District, (hereinafter referred to as the, "Overlay District") in accordance with the policies established in the Johnson County Industrial Airport Comprehensive Compatibility Plan.

17-702 APPLICABILITY AND EXEMPTIONS. Any plat or subdivision of land, or any part thereof which is located within the Airport Interest Area shall be prepared, presented for approval and recorded as herein prescribed. The regulations contained herein shall apply to the subdivision of a lot, tract, or parcel of land into two (2) or more lots, tracts, or other divisions of land, including the resubdivision or replatting of land, except that the regulations in this Article shall not apply to any subdivisions or splits of land explicitly excepted from the subdivision regulations of the City of Gardner.

- 702.1 Basic Terms, for the purpose of the regulations in this Article, unless otherwise specifically provided, the words and phrases defined in this Section shall have the following meanings:

- A. Affected jurisdiction(s): shall mean the municipal or quasi-municipal entities which have adopted the regulations in this Article, specifically the City of Olathe, Kansas; The City of Gardner, Kansas; the County of Johnson, Kansas; and Johnson County Airport Commission.
- B. Avigation easement: Authorization by a property owner granting to another person or persons the use of air rights over any part of his property so designated.
- C. Director: shall mean the Director of Planning for Johnson County, Kansas or such person's designee.
- D. Planning Commission Secretary: Person appointed by the Planning Commission to serve as Secretary.

17-703 PROCEDURES FOR PLAT APPROVAL.

- 703.1 General Procedures. Any landowner or their agent desiring to subdivide property shall follow the general procedures for subdivision approval as prescribed by the subdivision regulations of the applicable jurisdiction within which the property is located, except that the following special review procedures shall also apply due to the multiple jurisdictional interests of the Airport Interest Area.
- 703.2 Application. The review procedures specified in this Section shall apply and be utilized by the City of Gardner as a supplementary part of its prescribed subdivision procedures for all subdivision plats subject to the provisions contained in Section 2 of this Article and which occur or are proposed within the Airport Interest Area, including all airport-owned property:
- 703.3 Review Procedures.
 - A. Generally. Written notices of all proposed subdivisions as required herein shall be provided by the following jurisdictions as applicable:
 - 1. For all unincorporated areas, to include airport-owned properties located within the unincorporated county: the Planning Commission Secretary shall provide written notice to the Johnson County Airport Commission, and to the Planning Departments of the City of Olathe (herein referred to as the "City") and Johnson County (herein referred to as the "County");
 - 2. For all incorporated areas, to include airport-owned properties located within any incorporated area: the City of Olathe Planning Department or the City of Gardner Planning Department, as applicable, shall provide written notice to the Johnson County Airport Commission and to the Johnson County Planning Office.

The review procedures contained within this Subsection may be further implemented through mutually-agreed upon departmental procedures established by the affected jurisdictions hereto. Said procedures may be supplementary to the review procedures established herein, but shall not, in any instance, supersede or nullify the review procedures established within this Subsection. In the event of a conflict, either real or apparent, between such supplementary departmental procedures and

the regulations contained within this Subsection, the regulations contained within this Subsection shall control.

B. Jurisdictional Notice.

1. The Planning Commission Secretary, upon receipt of any subdivision proposal or application as applicable pursuant to Section 2 of this Article, shall provide written notice and copies of all relevant documentation within seven (7) days of their receipt to the Johnson County Airport Commission (hereinafter referred to as the "airport commission") and to the Planning Departments of the city or county. The written notice shall be sent by Certified Mail, Return Receipt Requested, and the notice shall invite and seek to obtain city and county review and comment regarding said proposal or application.
2. The airport commission, the city and county shall submit their comments to the Planning Commission Secretary within five (5) working days after receipt of the notice and documentation. Failure on the part of the reviewing jurisdiction(s) to provide comments within this time frame shall indicate their concurrence with said proposal or application.
3. The Planning Commission Secretary shall incorporate any such comments and recommendations received on the proposal or application within its review and shall include them in the official record related thereto;
4. The Planning Commission Secretary shall provide to the airport commission, the city and county a full and complete copy of its comments or recommendations upon the proposal or application at least seven (7) days prior to the Planning Commission meeting at which official consideration or action would be expected to be initiated;
5. The airport commission, the city and county shall notify the Planning Commission Secretary in writing, within three (3) days of receipt of the Secretary's comments or recommendations, of any conflict or dispute related to the recommendations on the proposal or application;
6. If no conflict or dispute is identified throughout this review procedure, the City of Gardner may proceed to take final action on the proposal or application through its regular review procedures, including as exhibits to the staff reports any comments submitted by the airport commission, the city or county;
7. Upon receipt of any notice of conflict or dispute from the airport commission, the city or county, the City of Gardner shall refrain from any official consideration or official action upon the proposal or application until representatives of the City of Gardner, the airport commission, city and county have met to discuss resolution of the conflict or dispute. Said meeting shall be held within thirty (30) days following the receipt of notice of conflict or dispute;

8. In the event the conflict or dispute cannot be resolved through mutually acceptable recommendations at the staff level, then the Planning Commission Secretary shall submit the joint review comments and recommendations to the Planning Commission for consideration and action. All comments received from the airport commission, the city or county shall be included as exhibits to the staff reports;
9. In the event the conflict or dispute cannot be resolved through mutually acceptable recommendations at the Planning Commission level, then all statements of objection and recommendations submitted by the airport commission, the city or county shall be included as exhibits to the staff reports and shall be made a part of the official record on the proposal or application. The proposal or application shall then be submitted to both the Johnson County Board of County Commissioners and to the governing body for the city for final approval or denial. Both governing bodies must approve the proposal or application in order for said proposal or application to be granted; denial of a proposal or application by either of the governing bodies shall render said proposal or application denied. The two governing bodies shall take action on the proposal or application within thirty (30) days of each other.
10. Appeals from a decision made by either the Johnson County Board of County Commissioners or the governing body for the city shall be processed pursuant to the appellate procedures established in Section 7 of this Article.
11. The attached Exhibit A shall serve, by way of example, as a procedural diagram of the review and comment process.

17-704 DESIGN STANDARDS/IMPROVEMENTS. All subdivisions of land located within the Airport Interest Area subject to the regulations contained herein shall conform to the minimum design standards and improvements prescribed by the subdivision regulations of the City of Gardner within which the property is located, unless governed by any regulations contained herein which shall control. Further, all subdivision of land located within the Airport Interest Area subject to the regulations contained herein shall be subject to all special requirements as established in Section 6 of this Article.

17-705 SPECIAL REQUIREMENTS. In addition to the requirements, standards, improvements, and limitations imposed by the subdivision regulations of the jurisdiction within which the property is located, the following special requirements shall also apply to all subdivisions of land within the Airport Interest Area.

- 705.1 **Avigation Easements.** A permanent avigation easement shall be provided for all land within the Airport Interest Area which is subdivided pursuant to the regulations in this Article. A statement shall be placed on the final plat dedicating said avigation easement to the County, and granting the right of avigation over the property.
- 705.2 **Filing of Affidavit of Interest and Plat Notation.** In conjunction with the recording with the Johnson County Register of Deeds any subdivision plat approved pursuant to the regulations in this Article, the owner of the property shall also prepare and record with the Johnson County Register of Deeds a written notice stating:

- A. that the property within the subdivision is located within the Airport Overlay District and is subject to overflight, sight, and sound of aircraft operating from the Johnson County Industrial Airport, and
- B. that certain restrictions have been placed on the development and use of property within the Airport Overlay District area which are in addition to the restrictions contained in the City of Gardner Zoning Ordinance and Subdivision Regulations.

Further, a statement provided the same notice shall be placed on the final plat.

- C. Compliance with the Overlay District Zoning Regulations. All subdivision plats subject to the provisions of the subdivision regulations in this Article shall conform to all applicable provisions of the Overlay District Zoning Regulations. No final approval of any plat shall be granted by any governing body unless it complies with the aforementioned zoning regulations.
- D. Special Restrictions. No building permit shall be issued for any building or improvement on any lot, tract, or parcel of land within the Airport Interest Area until all requirements of these subdivision regulations, and of the Overlay District Zoning Regulations, have been met.

17-706 ADMINISTRATION.

- 706.1 Enforcement. It shall be the duty of the Planning Commission Secretary to administer and enforce the regulations in this Article. Violations of these regulations shall be processed in accordance with the City of Gardner Zoning Ordinance and Subdivision Regulations concerning violations thereof.
- 706.2 Interpretations. In the event an administrative interpretation of the regulations in this Article is necessary, said interpretation shall be made by the Planning Commission Secretary of such person's designee such that the result will not be contrary to the spirit, intent, and purpose of the regulations in this Article. If it is determined by said Planning Commission Secretary that the interpretation could constitute a significant departure from the normal interpretational decisions typically made by the Planning Commission Secretary, then the Planning Commission Secretary shall notify the Directors of all affected jurisdictions which are a party to the regulations in this Article, including the Industrial Director of the Airport Commission, informing them of said interpretation. The Director of any affected jurisdiction, including the Executive Director of the Airport Commission, may appeal said interpretation through the appeals procedures established within this Section.
- 706.3 Amendments. Amendments to the regulations in this Article, may be proposed by any affected jurisdiction which is a party to these regulations. If an amendment is initiated by the City of Gardner, the amendment shall be processed in the manner prescribed in the City of Gardner Zoning Ordinance and Subdivision Regulations and in accordance with all regulations contained therein. The Planning Commission Secretary shall make a recommendation to the Planning Commission, who will then, after review and recommendation from the Johnson County Airport Commission and all affected jurisdictions hereto, take final action to approve or disapprove the proposed amendment.

- 706.4 Rule Exceptions. Any landowner may apply for a rule exception from the regulations in this Article in a case where a hardship caused by size, location or configuration of land, topography or other such factors affect a specific tract or subdivision or portion thereof. Said rule exception shall be processed in the manner prescribed in the City of Gardner Zoning Ordinance and Subdivision Regulations and in accordance with all regulations contained therein, with review and comment from the Johnson County Airport Commission, and all other affected jurisdictions.
- 706.5 Appeals. (Reserved).
- 706.6 Severability. If any of the provisions of the subdivision regulations in this Article or the application thereof to any person or circumstances are held invalid, such invalidity shall not affect other provisions or applications of the regulations in this Article which can be given effect without the invalid provision or application, and to this end, the provisions of the regulations in this Article are declared to be severable.
- 706.7 Effective Date. The regulations in this Article shall be in full force and effect from and after its adoption by all participating jurisdictions: the City of Olathe, Kansas; the City of Gardner, Kansas; and the County of Johnson, Kansas, and shall be incorporated into and declared a part of the City of Gardner Zoning Ordinance and Subdivision Regulations.

Approved by the City of Olathe, Kansas
Approved by the City of Gardner, Kansas
Approved by the Johnson County Board of County Commissioners

Article 8. Filing Fees.

17-801 DESIGNATED. Fees shall be paid by all persons or corporations submitting preliminary plats and final plats for approval by the Planning Commission in an amount as established by the Governing Body by Resolution.

The fees shall be paid at the time any plat is submitted to the Planning Commission.
(Ord. 2019, Sec. 1)

Article 9. Penalties.

17-901 PENALTY FOR VIOLATIONS - ACTIONS. The violation of any provision of this title is a misdemeanor, and any person, firm, association, partnership or corporation convicted thereof shall be punished by a fine not to exceed five hundred dollars; and the City of Gardner, Kansas, shall further have the authority to maintain suits or actions in any court of competent jurisdiction for the purpose of enforcing any provisions of this title and to abate nuisances maintained in violation thereof; and in addition to other remedies, institute injunction, mandamus, or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate such violation, or to prevent the occupancy of the building, structure, or land. Each day any violation of this title shall continue shall constitute a separate offense. (Ord. 1734, Sec. 1)